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ELECTRONIC REGISTRATION SYSTEMS, INC., WRIGHT, FINLAY & ZAK, LLP and
RENEE M. PARKER, ESQ.

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON (TACOMA)**

JAMES A. BIGELOW

Plaintiff,

vs.

NORTHWEST TRUSTEE SERVICES, INC.;
GREEN TREE SERVICING, LLC;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; and
DOE DEFENDANTS 1-20

Defendants.

Case No.: 3:14-cv-05798 BHS

**OPPOSITION TO PLAINTIFF'S MOTION
FOR ENTRY OF PROTECTIVE ORDER
BY DEFENDANTS GREEN TREE
SERVICING LLC, MORTGAGE
ELECTRONIC REGISTRATION
SYSTEMS, INC., WRIGHT, FINLAY &
ZAK, LLP AND RENEE M. PARKER, ESQ**

Noting Date: March 27, 2015

**TO THE HONORABLE COURT, TO PLAINTIFFS, AND TO THEIR
ATTORNEYS OF RECORD:**

Defendants, GREEN TREE SERVICING LLC, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., WRIGHT, FINLAY & ZAK, LLP, and RENEE M.
PARKER, ESQ. (*erroneously sued as* Renee Parker) (hereinafter "Defendants" collectively),
hereby submit their memorandum of points and authorities in Opposition to Plaintiff James A.
Bigelow's (hereinafter "Plaintiff") Motion for Entry of Protective Order as filed with this Court
on March 14, 2015 as Docket Item No. 62 ("Motion") as follows:

[PROPOSED] ORDER ON MOTION TO
DISMISS SECOND AMENDED
COMPLAINT

Renee M. Parker (SBN 36995)
Wright, Finlay, & Zak, LLP
4665 MacArthur Blvd., Suite 200
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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

On or about October 7, 2014 Bigelow filed his Verified Complaint with this Court as Docket Item No. 1. Bigelow filed an Amended Verified Complaint on or about November 13, 2014 as Docket Item No. 11. Green Tree and Mortgage Electronic Registration Systems, Inc. ("MERS") filed a Motion to Dismiss Amended Complaint on or about December 2, 2014 (Docket Item No. 15) and, after reviewing the pleading and the opposition filed by Bigelow, the Amended Complaint was dismissed with leave to amend on or about January 29, 2015 (Docket Item No. 35). Despite no order being entered on Bigelow's Motion for Enlargement of Time [to Amend the First Amended Complaint] (Docket Item No. 43) filed on the eve of the deadline, Bigelow filed his Second Amended Complaint on or about February 23, 2015 as Docket Item No. 44. Counsel for Wright Finlay & Zak, LLP and Renee M. Parker filed an Anti-SLAPP Motion on March 13, 2015 as Docket Item No. 60, and Defendants filed a Motion to Dismiss Second Amended Complaint on March 20, 2015 as Docket Item Nos. 65-67.

On or about January 14, 2015, Plaintiff (and a non-attorney believed to be providing legal assistance), and counsel for both Defendants and Northwest Trustee Services, Inc. ("NWTs") held a telephonic conference pursuant to Fed. R. Civ. Proc. 26(f). During the conference call Plaintiff insisted on inclusion of privilege waivers for yet-unpropounded discovery on part of Defendants and NWTs, to which counsel for Defendants and NWTs declined to agree.

Shortly thereafter, on or about January 17, 2015, Plaintiff sent via e-mail a demand that Defendants and NWTs execute a "protective order" that Defendants reasonably believe would remove all claims of privilege on part of Defendants and NWTs, while simultaneously allowing Plaintiff to request production of any privileged document absent that defense of privilege. Defendants declined to execute the document both on principle, and also because Plaintiff never propounded discovery to allow an understanding of what discovery Plaintiff would even demand that would require a protective order.

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1 To date neither Plaintiff nor Defendants have propounded discovery, thus rendering
2 Plaintiff's Motion as premature.

3 Further, because Plaintiff has included Wright Finlay & Zak, LLP and its attorney Renee
4 M. Parker as defendants ("Attorney Defendants"), and because Attorney Defendants defend
5 Green Tree Servicing LLC and Mortgage Electronic Registration Systems, it is believed that
6 under the guise of this "Protective Order" Plaintiff will demand documents and information that
7 would be protected by the Attorney-Client Privilege, such as attorney work product and
8 information related to strategies pertaining to Defendants' litigation defense.

9 For the reasons set forth more fully below, Plaintiffs' Motion should be denied in its
10 entirety.

11 **II. ARGUMENTS**

12 **A. The Motion for Entry of Protective Order Forces Defendants to Waive Rights Accorded to Them, Not to Protect Himself**

13 Plaintiff seeks the Protective Order pursuant to Fed. R. Civ. Proc. 26(c) to "facilitate the
14 confidential exchange of documents through formal discovery." Motion, ¶ 1. However, the true
15 rationale is as stated in "Attachment 3" to the Motion, in which Plaintiff states "It has come to
16 my attention that without a confidentiality agreement, it increases your ability to prejudice me
17 and makes it difficult, if not impossible, for me to conduct discovery."

18 This is not the proper purpose for a protective order under Fed. R. Civ. Proc. 26(c),
19 which essentially provides the order as a mechanism for a party against whom discovery is
20 sought to protect *itself*, not to force other parties to waive all rights to privilege as Plaintiff seeks
21 to do here. More specifically, Rule 26(c) states, in part: "A party or any person *from whom*
22 *discovery is sought* may move for a protective order in the court where the action is pending—
23 or as an alternative on matters relating to a deposition, in the court for the district where the
deposition will be taken." (emphasis added).

24 Here Plaintiff clearly demonstrates he is demanding the protective order not to protect
25 himself, but rather to remove all basis for Defendants to object to discovery requests, regardless
26 of what those requests demand or how burdensome those demands may be. Plaintiff also

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disregards the Uniform Discovery Act as adopted by RCW 5.51, and the ethical duty of counsel for Defendants to provide competent representation by potentially demanding information related to attorney work product and suggested courses of action for defense of the litigation – all under the guise of creating a ‘level playing field’ in the removal of all Defendants’ defenses via this Protective Order. On these grounds alone Plaintiff’s Motion should be denied.

B. The Motion for Entry of Protective Order is Premature

Plaintiff filed his Motion asking for a Protective Order, but fails to disclose that Defendants have not propounded discovery such that the Order would be necessary. Likewise, Plaintiff also has not propounded discovery upon Defendants.

Plaintiff seeks adjudication of an issue that has not occurred, which renders the Motion as being premature. *See e.g., Somers v. Snohomish Cnty.*, 105 Wash. App. 937, 950, 21 P.3d 1165, 1171 (2001) (“Because we have decided this case well in advance of the January 6, 2002 deadline, we deny the motion as premature and without prejudice to any party raising the issue again at an appropriate time and with the appropriate court.”); *Communist Party of U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 71, 81 S. Ct. 1357, 1397, 6 L. Ed. 2d 625 (1961) (“Many of these questions are prematurely raised in this litigation. Merely potential impairment of constitutional rights under a statute does not of itself create a justiciable controversy in which the nature and extent of those rights may be litigated.”).

Because no controversy yet exists, Plaintiff’s Motion should be denied without prejudice.

C. Plaintiff has Recourse if Defendants do not Respond to Discovery

Plaintiff has recourse through this Court if Defendants do not respond to discovery requests, which similarly makes Plaintiff’s Motion moot. “A party may obtain discovery on any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. CR 26(b)(1). The requested discovery must be reasonably calculated to lead to the discovery of admissible evidence. CR 26(b)(1). A party, upon reasonable notice to other parties

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1 and upon showing compliance with CR 26(i), may apply for an order compelling discovery. CR
 2 37(a).” *City of Lakewood v. Koenig*, 160 Wash. App. 883, 891-92, 250 P.3d 113, 118 (2011).

3 Plaintiff filed his Motion based solely on the explanation that he “believes discovery
 4 will not be a smooth process and may require actions of the court...” Motion, ¶ 4. Although
 5 Defendants share a belief in conservation of judicial resources, and fully intend to comply with
 6 all discovery requests within the boundaries and spirit of the law, it is counter-productive for
 7 Plaintiff to seek the Court’s assistance based on this unreasonable “belief” without having first
 8 exhausted other available remedies.

9 III. CONCLUSION

10 Plaintiff seeks this Protective Order for an improper purpose, appears to request the
 11 Motion in an effort to eliminate Defendants’ privilege rights, and does so without having first
 12 received or propounding any discovery. The Motion is premature, and disregards that Plaintiff
 13 is afforded other less invasive protections to compel discovery. Accordingly, Plaintiff’s Motion
 14 for Entry of Protective Order lacks merit and must be denied.

15 WHEREFORE, based upon the facts and conclusions above, Defendants requests that:

- 16 1. Plaintiff’s Motion to for Entry of Protective Order be DENIED; and
- 17 2. For such other and further relief as the Court deems just and proper.

18 Dated: March 20, 2015

Respectfully submitted,
WRIGHT, FINLAY, & ZAK, LLP

19 By: /s/ Renee M. Parker 36995
 20 Renee M. Parker, WSBA # 36995
 21 Attorneys for Defendants,
 22 GREEN TREE SERVICING LLC, MORTGAGE
 23 ELECTRONIC REGISTRATION SYSTEMS,
 24 INC., WRIGHT, FINLAY & ZAK, LLP, and
 25 RENEE M. PARKER, ESQ.

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DECLARATION OF SERVICE

The undersigned declares as follows:

On March 20, 2015, I served the foregoing document: **OPPOSITION TO PLAINTIFF'S MOTION FOR ENTRY OF PROTECTIVE ORDER BY DEFENDANTS GREEN TREE SERVICING LLC, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., WRIGHT, FINLAY & ZAK, LLP AND RENEE M. PARKER, ESQ** on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope via postage prepaid, regular first class mail and/or electronic service as follows:

SERVICE VIA U.S. MAIL:

CHAMBER COPY:

The Honorable Benjamin H. Settle
United States Courthouse
1717 Pacific Avenue, Room 3100
Tacoma, WA 98402 – 3200

ELECTRONIC SERVICE:

PLAINTIFF:

James A Bigelow
sistermoonproductions@gmail.com

NORTHWEST TRUSTEE SERVICES INC.:

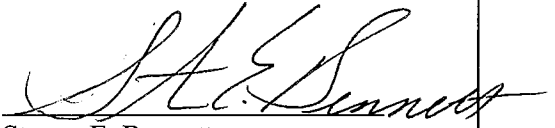
Joseph H Marshall
jomarshall@rcolegal.com, kstephan@rcolegal.com

FIRST AMERICAN TITLE INSURANCE COMPANY:

Thomas F. Peterson
tpeterson@sociuslaw.com, lmckenzie@sociuslaw.com

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 20th day of March, 2015


Steven E. Bennett

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